IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 317 OF 1999.

Smt. Natalina Pereira,
major of age,
resident of Chondrovaddo, Fatorda,
Margao, Goa, through her attorney
Shri Mariano Francisco Pereira,
son of Bernardo Pereira, major of age,
resident of Margao, Goa. .... Petitioner.

Versus

1. Mrs. Lucy Pereira Faleiro,
widow of Costao Faleiro;

2. a. Mrs. Manuelina Faleiro,
wife of Piedade Barbosa;
b. Mr. Piedade Barbosa
c. Mr. Conceicao Faleiro;

3. Mrs. Rita Azaredo, widow of
Victorino Faleiro;

4. Mr. Remeldios Faleiro
(deceased, through Lrs.)
a) Mrs. Filomena Dias and her husband;
b) Mr. Mariano Dias, both residents
of Nuvem, Salcete, Goa.
c) Mrs. Carmina Barbosa and her husband;
d) Mr. Conceicao Barbosa, both residents
of : C/o Thomas Barbosa Stage Setting,
Chondrovaddo, Fatorda, Margao, Goa.
e) Miss Juliet Faleiro;
f) Miss Meena Faleiro;
g) Mr. Mariano Faleiro;
h) Mr. Xavier Faleiro,
all residents of House No.938,
Chandrawaddo, Fatorda, Margao,
Goa.

5. Mrs. Assumcao Barreto.

6. Master Luis Faleiro,
son of late Francisco Faleiro;

7. Miss Liberata Faleiro,
daughter of late Francisco Faleiro,
(Through their next friend,
their paternal Uncle, Paulo Fernandes)

8. Mr. Paulo Faleiro;

9. Mrs. Remediana Colaco Faleiro;
wife of said Paulo Faleiro;

10. Mrs. Aurora Dias,
widow of Mariano Faleiro;
all residents of Chondrovaddo,
Fatorda, Margao, Goa.

11. President,
Administrative Tribunal,
Panaji, Goa. .... Respondents.

Mr. Anthony D'Silva, Advocate for the Petitioner.

Mr. Amrut Kansar, Advocate for the Respondents No.4(a), (b), ©, (e), (f) and (h), 6, 7, 8, 9 and 10.

CORAM: J. N. PATEL, J.

DATE: 8th NOVEMBER, 2006.

ORAL JUDGMENT:

The petitioner has impugned the Judgment and Order dated 14th June, 1999 of the Administrative Tribunal in Tenancy Revision Application No. 6/93 and for seeking restoration of the Judgment and Order dated 15th January, 1993 passed by the Dy. Collector in Case

No.TNC/APPL/5/ADC-II/85 and Judgment of the Joint Mamlatdar dated 7.1.85 in Case No. TNC/JM-II/18/82 and consequently the application dated 25.9.82 of the petitioner before the Mamlatdar be allowed.

2. The petitioner filed an application dated 25th September, 1982 addressed to the Mamlatdar of Salcete at Margao for being declared as a tenant in respect of the suit land consisting of land appurtenant and around the dwelling house of the petitioner which is enclosed by wall of loose stones. It was the case of the petitioner that the land belongs to respondents Nos. 1 to 10 and is situated at Chondrovaddo of Fatorda at Margao. It was the case of the petitioner that the deceased husband of respondent No.1 had permitted the petitioner to cultivate the suit land and in order to protect her cultivation consisting of vegetables, petitioner has constructed a wall of loose stones. According to the petitioner, portion of the land situated at a lower level and across the road on the northern side was also permitted to be cultivated by the late husband of respondent no.1 out of love and affection. It is submitted that as the petitioner was harassed by respondents No.1 to 10, she was required to stop cultivating this portion of the land lying across the road, whereas she continued to cultivate the suit land and therefore the petitioner became entitled to be declared as tenant of the suit land.

3. In the proceedings before the Mamlatdar the petitioner examined herself and two witnesses and on the basis of the evidence brought on record the learned Mamlatdar held that the late Shri Costao Faleiro and husband of respondent No.1 had requested the petitioner to settle on the suit land and construct her house thereon and allowed her to cultivate the suit land the area of which is in exclusive possession of the petitioner, fenced by loose stones. This Judgment and Order dated 7th January, 1985 of the Joint Mamlatdar was challenged by the respondents by preferring appeal before the Collector of Salcete at Margao which came to be decided by the Deputy Collector who dismissed the appeal filed by the respondents and held that the petitioner is a "deemed tenant" of the suit land comprising the area around the dwelling house and that she has been cultivating the suit land for about 30 years which fact has been supported by the witnesses. The petitioner has also been found to be in possession of the suit land. It has also come on record that she had dug a well in the suit land to facilitate her cultivation.

4. Having lost the appeal the respondents preferred revision before the Administrative Tribunal at Panaji under Section 50 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964. It is in the revision that the Administrative Tribunal by Judgment and Order dated 14th June, 1999 has upset the concurrent finding of fact arrived at by the Mamlatdar

and Dy. Collector for the reason that the petitioner has failed to prove that she was the tenant for want of evidence to the effect that when the tenancy was created and what was the rent fixed and in absence of transfer of right to enjoy the suit land in consideration of payment of rent the petitioner cannot be held to be a tenant. The Administrative Tribunal also held that the petitioner, in her evidence, has admitted she was allowed to cultivate the suit land out of love and affection which does not entitle her for any relief.

5. Another ground on which the petitioner's case was not accepted is that the petitioner has not been able to bring on record any evidence to identify the suit land and that she was a contractual tenant and did not accept the contention of the petitioner that by way of rent part of the produce was being paid to the owners as rent.

6. It is therefore the case of the petitioner that the finding arrived at by the Administrative Tribunal is clearly erroneous for the reason that even if it is accepted that the petitioner was not a contractual tenant, but it cannot be denied that the petitioner was a “deemed tenant” and therefore entitled for such a declaration and protection by ignoring the evidence on record and therefore the impugned order of the Administrative Tribunal deserves to be quashed and set aside.

7. On behalf of the respondents, it is contended that even if the petitioner's case is accepted ,at the highest, she could have claimed protection under the Goa Mundkars (Protection from Eviction) Act 1975. It is contended that being a distant relative the petitioner was permitted to reside on the land with the consent of the owner with fixed habitation and dwelling house without obligation to render any service and therefore the claim of the petitioner that she is tenant and deserves to be protected under the Goa, Daman and Diu Agricultural Tenancy Act (for short, Tenancy Act of 1964) is unfounded.

8. It is further contended that the Tribunal has rightly rejected the claim of the petitioner to be tenant as the petitioner being a distant relative was allowed to reside in the premises and cultivate four bandhis of paddy field situated on the lower portion of the property on the northern side out of love and affection which was the case of the petitioner before the Mamlatdar and therefore it clearly disentitles the petitioner for the relief claimed by her. It is further contended that the petitioner has not been able to establish the creation of tenancy, the amount of rent which was to be paid and in cross-examination she has admitted the suit land was never given to her on lease and her claim that she used to give to the respondent a part of the produce on whatever she

had cultivated cannot be treated as payment of rent. It is further contended that the Tribunal was justified in holding that as the petitioner has failed to identify the suit land neither in her application nor before the Mamlatdar of Salcete she is not entitled for declaration that she is tenant in respect of the suit land unless the suit land has been properly identified as held in the case of ***Ramrai Goltekar & others v. Peter Michael Fernandes & others (1995 AIHC 1368 (Bombay High Court)***.

9. It is not disputed that late Costao Faleiro gave the piece of land in question to the petitioner of whom the respondents are the legal heirs and that the petitioner has made a fence of loose stones to cover the land around the place where she has constructed the house and has been cultivating vegetables. In addition to this part of the land the said Costao Faleiro also permitted to cultivate the paddy field cultivating 4 bhandis of paddy field across the road on the norther side in front of her house which was out of love and affection and the possession of which has been taken away by the respondents. Therefore the crucial issue which arises for determination is whether the petitioner can be held to be a "deemed tenant" as defined in Section 4 of the Tenancy Act. The relevant portion of Section 4 of the Tenancy Act reads as under :-

> "4. Persons deemed to be tenants. - A person lawfully cultivating any land

> belonging to another person (hereinafter in this section referred to as the owner) on or after the 1st of July, 1962 but before the commencement of this Act, shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not --
>
> (i) a member of the owner's family, or
>
> (ii) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or of any members of the owner's family, or
>
> (iii) a mortgagee in possession: ".....

10. The respondents have not disputed the fact that the petitioner was lawfully cultivating the land around the house which was given to her by Costao Faleiro before the commencement of the Tenancy Act and therefore as defined in Section 4 of the Tenancy Act is deemed to be a tenant for all purposes of the said Tenancy Act and this fact has been upheld by the Joint Mamlatdar of Salcete in his order and confirmed by the Deputy Collector in appeal. Therefore the land on which the petitioner claims to be deemed tenant is not the land which the husband of respondent No.1 allowed the petitioner to cultivate i.e. 4 bhandis of paddy field situated on the lower part across the road on the northern side which the petitioner herself has accepted has been taken away from her. The Ld. Tribunal erred on this factual aspect.

11. In the case of ***Dahya Lala and others v. Rasul Mahomed Abdul Rahim and others (A.I.R. 1964 S.C. 1320)*** Five Judge Bench of the Supreme Court while dealing with the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 particularly Sections 2(18), 4(c), 29(2) held that a deemed tenant as defined in Section 2(18) of the Bombay Tenancy and Agricultural Lands Act is protected and cannot be evicted except in accordance with the provisions of the said Act. The definition of "deemed tenant" in section 2(18) of the Bombay Tenancy and Agricultural Lands Act, 1948 is parimateria to the definition given in Section 4 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964. While dealing with the issue in para 6 of reported judgment, the Supreme Court held as under :-

> "6. The Act of 1948, it is undisputed, seeks to encompass its beneficent provisions not only tenants who held land for purpose of cultivation under contracts from the owners but persons who are deemed to be tenants also. The point in controversy is whether a person claiming the status of a deemed tenant must have been cultivating land with the consent or under the authority of the owner. Counsel for the appellants submits that tenancy postulates a relation based on contract between the owner of land, and the person in occupation of the land, and there

can be no tenancy without the consent or authority of the owner to the occupation of that land. But the Act has by S.2(18) devised a special definition of tenant and included therein persons who are not contractual tenants. It would therefore be difficult to assume in construing S.4 that the person who claims the status of a deemed tenant must be cultivating land with the consent or authority of the owner. The relevant condition imposed by the statute is only that the person claiming the status of a deemed tenant must be cultivating land "lawfully". It is not the condition that he must cultivate land with the consent of or under authority derived directly from the owner. To import such a condition is to rewrite the section, and destroy its practical utility. A person who derives his right to cultivate land from the owners would normally be a contractual tenant and he will obviously not be a "deemed tenant". Persons such as licencees from the owner may certainly be regarded as falling within the class of persons lawfully cultivating land belonging to others, but it cannot be assumed therefrom that they are the only persons who are covered by the section. The Act affords protection to all persons who hold agricultural lands as contractual tenants and subject to the exceptions specified all persons lawfully cultivating lands belonging to others, and it would be unduly restricting the intention of the Legislature to limit the

> benefit of its provisions to persons who derive their authority from the owner, either under a contract of tenancy, or otherwise. In our view, all persons other than those mentioned in cls. (a), (b) and © of S.4 who lawfully cultivate land belonging to other persons whether or not their authority is derived directly from the owner of the land must be deemed tenants of the lands. ”

12. The Administrative Tribunal proceeded on a wrong premise that she is claiming to be a contractual tenant and dismissed the claim of the petitioner. It ought to have seen that even if the petitioner has not been able to establish that she is a contractual tenant which is not her claim, the Tribunal ought to have accepted the concurrent finding of the Mamlatdar and Deputy Collector on the aspect that the petitioner was lawfully cultivating the area around the house as she was allowed to do so on the land being given to her by the said Costao Faleiro. It is not the case of the respondents that she was a rank trespasser. On the other hand, the respondents had gone to the extent of accepting that she can claim to be a mundkar under the Goa Mundkars Act. But then the distinction lies in the fact that the petitioner cannot be held to be a mundkar as her case is not covered within the definition of “mundkar” as given in section 2(p) of the Goa Mundkars Act as the area in her occupation along with the dwelling house as claimed by her is being cultivated to grow vegetables and fruits

which is admeasuring approximately 300/400 sq. metres, and considering the fact that she was given land and not dwelling house which she subsequently constructed.

13. Another ground on which the claim of the petitioner has been rejected by the Administrative Tribunal is that she has not been able to identify the area of the land leased out to her and in absence the petitioner to specify the exact boundaries of the suit land in order to succeed to get a declaration that she is a tenant of the area of which she claims to be a tenant her claim cannot be accepted. The petitioner has come up with a specific case that she was allowed to occupy the land by a relative on which she has constructed a dwelling house and she is cultivating the surrounding area marked by the boundary of loose stones. The petitioner may not be knowing the exact area of the land in her occupation nor any attempt was made on the part of the petitioner or respondents to get it ascertained, but the fact is not disputed that the petitioner has been cultivating the land surrounding the dwelling house where she is residing. Therefore, considering the evidence on record it cannot be said that the findings given by the Mamlatdar and confirmed the Deputy Collector are perverse or suffered from any error or illegality so as to call for interference in revision.

14. Therefore the petition will have to be allowed. Rule made absolute in terms of prayer clause (a) which reads as under :-

> " It is therefore prayed that this Hon'ble Court may be pleased by way of a Writ of Certiorari or any other appropriate Writ, Order or Direction, quash and set aside the impugned Judgment of the Administrative Tribunal dated 14th June 1999 in Tenancy Revision Application no. 6/93 and restore the Judgment dated 15th January 1993 of the Deputy Collector in Appeal No.TNC/Appl/5/ADC-II/85 and the judgment of the Joint Mamlatdar dated 7-1-85 in case no. TNC/JT-II/18/82 and consequently the application dated 25-9-82 of the petitioner before the Mamlatdar be allowed. "

with no order as to costs.

J. N. PATEL, J.

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